

REMARKS

The present amendment is in response to the Office Action dated August 10, 2007, and follows a telephone interview between the Examiner, the undersigned representative, and Mr. Randall T. Webber, which took place on September 21, 2007. The interview followed submission of proposed amendments to claims 1, 5 and 45. The Examiner agreed in the telephone interview that amended claim 1 distinguished over U.S. Patent No. 248,121 of Tuttle, cited against claim 1 in the Office Action, and that amended claim 45 overcame the rejection under 35 U.S.C.112. However, the Examiner was concerned that amended claim 5 as originally proposed still did not distinguish over Tuttle when the support B could have horizontally spaced foot support portions. A possible amendment to claim 5 to define the relative positions or orientations of the primary and secondary user supports was discussed, and has been adopted in the foregoing amendment. In the foregoing amendment, amended independent claim 5 has been further amended to define the first and second portions as being at different elevations, and it is believed that this should overcome the rejection based on Tuttle.

Also accompanying this amendment is a Supplemental Information Disclosure Statement listing some additional references. A list of the same references was provided to the Examiner along with the proposed claims amendments discussed above, and the Examiner indicated in the telephone interview that he had reviewed these references and that they did not affect his decision regarding claims 1 and 5. It is respectfully requested that the references listed in the Supplemental Information Disclosure Statement be made of record in this application.

In the Office Action of August 10, the Examiner rejected a number of claims as indefinite under 35 U.S.C. 112, second paragraph, based on language in claims 1 and 45 which defined motion of the user support frame and exercise arm with reference to natural movement of the human body when performing a free bar triceps dip exercise. In the foregoing amendment, this passage has been canceled in both claims 1 and 45, as well as in the language of previous claim 1 now incorporated in claim 5, and it is submitted that this amendment overcomes the rejection of these claims as indefinite. As noted above, the Examiner indicated that the cancellation of this language in claim 45 overcame this rejection. Reversal of all claim rejections under 35 USC 112, second paragraph, is therefore respectfully requested.

Claims 1, 11-12, 14-15, 17, 21-22, 24, 41, 44, and 56 were also rejected in the Office Action as anticipated by Tuttle. In the foregoing amendment, as discussed in the telephone interview, claim 1 is amended to define the exercise arm as uni-directional, such that exercise resistance is only provided when the exercise arm is moved in one direction, whereas Tuttle's exercise arm is bi-directional and can be adjusted for exercise movement in two directions, as seen in Figures 1 and 2 and Figures 3 and 4, respectively. In the telephone interview, the Examiner agreed that amended claim 1 was distinguished over Tuttle. It is therefore submitted that claim 1 should now be allowable, along with claims 11-12, 14-15, 17, 21-22, 24, 41, 44 and 56 which depend from this claim. Additionally, claims 10, 13, 18-20, 25 to 38, 40, 42, and 43 which were withdrawn from consideration as directed to a non-elected species all depend from allowable claim 1, and consideration and allowance of these claims is therefore respectfully requested in addition to the other claims listed above.

A number of claims were not rejected as anticipated by Tuttle and were therefore only subject to the rejection under 35 U.S.C. 112, second paragraph, specifically claims 2 to 9, 16, 23, 39, 45, 46, 47, 49, 50, 52, and 55. Since the language in claims 1 and 45 which the Examiner rejected as indefinite has now been canceled, and the Examiner indicated in the telephone interview that cancellation of this language from claim 45 appeared to place that claim in order for allowance, it is respectfully submitted that claims 2 to 4, 16, 23, 39, 45, 46, 47, 49, 50, 52 and 55 are all now in order for allowance. Additionally, consideration and allowance of withdrawn claims 48, 51, 53 and 54 is respectfully requested since these claims depend from allowable generic claim 45.

In the foregoing amendment, as discussed with the Examiner in the telephone interview of September 21, claim 5 has been rewritten independently and revised to define a primary and a secondary user support which are at different elevations, rather than a seat and back pad. Amended claim 5 distinguishes over Tuttle who has a user support comprising a single user support platform B on which the user stands, and does not have primary and secondary supports which are at different elevations. In the telephone interview, the Examiner indicated that an amendment defining the different elevations of the primary and secondary user support would help to define over Tuttle. Amended independent claim 5 incorporates the wording of the previous version of claim 1 but without the language rejected as unclear by the Examiner in paragraph 2 of the Office Action. It is

therefore believed that amended independent claim should therefore also now be in order for allowance, along with claims 6 to 9 which depend from amended claim 5.

**CONCLUSION**

It is believed that the foregoing amendment overcomes all outstanding grounds of objection and rejection. All of the claims which were withdrawn from consideration as directed to a non-elected species now depend from a generic claim which is believed to be allowable in view of the foregoing amendment, and consideration and allowance of the withdrawn claims in addition to the claims considered in the Office Action of August 10 is respectfully requested.

It is believed that all claims remaining in this application, specifically claims 1 to 56, are now in condition in all respects for allowance, and early notice to this effect is earnestly solicited. If the Examiner has any questions or comments regarding the above Amendments and Remarks or believes that a telephone conversation may be useful in advancing prosecution, the Examiner is invited to contact the undersigned at the number listed below.

Respectfully submitted,  
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